

C. C. HUGHES

IBLA 77-410

Decided December 28, 1977

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer N 14198.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases:
Description of Land

BLM is not required to alter, modify, or correct an over-the-counter oil and gas lease offer in order to resolve a disparity in the land description contained therein.

2. Oil and Gas Leases: Applications: Amendments

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final departmental decision, but only with priority of filing as of the date the corrective information was filed.

APPEARANCES: Ted J. Gengler, Esq., Poulson, O'Dell and Peterson, Denver, Colorado, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from a decision dated May 16, 1977, by the Nevada State Office, Bureau of Land Management (BLM), rejecting Appellant's noncompetitive oil and gas lease offer N-14198 because of a discrepancy in the legal description of the land.

The offer was filed on Form 3120-3 (September 1968) the first paragraph of which reads:

The undersigned hereby offers to lease all or any of the lands described in item 2 that are available for lease, pursuant and subject to the terms and provisions of the Act of February 25, 1920 (21 Stat. 437, 30 U.S.C. sec. 181), as amended, hereinafter referred to as the Act and to all reasonable regulations of the Secretary of the Interior now or hereafter in force, when not inconsistent with any express and specific provisions herein, which are made a part hereof.

Item 2 of the form provides the printed headings "Land requested: State"; "County"; "T. R."; and "Meridian." This portion of the form was filled out by Appellant as follows:

2. Land requested: State Nevada County Eureka
T. 26 N: R. 53 E M.D. Meridian

Township 20 North, Range 53 East, M.D.M.
Section 21: Lots 1 through 16 inclusive (All)
Section 22: Lots 1, 2, 3, 4, E 1/2 (All)
Section 23: All

Total Area 1772.81 Acres

Item 4 of the form shows that Appellant remitted a total of \$ 896.50 filing fee and rental. ^{1/} The BLM decision rejected Appellant's offer because he showed both T. 26 N., R. 53 E. and T. 20 N., R. 53 E.

In his statement of reasons Appellant states that the land description in his offer complies with 43 CFR 3101.1-4(a) which provides: "Description of lands in offer. (a) Surveyed lands. If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township and range." Appellant contends that the acreage applied for could easily be determined by the BLM in the normal processing of the offer and that the mere placement of the inapplicable township designation (T. 26 N) in a position remote from the complete legal description of the lands applied for is not a basis for rejection of the offer.

[1] Since the inclusion of two township designations made the offer ambiguous it was appropriate for BLM to reject the offer or otherwise give notice that the offer was deficient as filed. Even if BLM could resolve the disparity in the description, its function

^{1/} 43 CFR 3103.3-2(a) has since been amended to provide for a rental of \$ 1 per acre for noncompetitive leases issued on or after February 1, 1977. 42 FR 1033 (January 5, 1977).

is not to alter or modify lease offers for offerors. Mountain Fuel Supply Co., 13 IBLA 85 (1973).

[2] However, since the defective offer was over the counter, it could be corrected and amended by the offeror prior to final rejection; priority of filing being as of the date of the corrective action. John Oakason, 21 IBLA 185 (1975). The Appellant's statement of reasons amends the offer to show the correct designation, i.e., T. 20 N., and the appeal suspended the effect of the rejection. Therefore, BLM may appropriately consider Appellant's offer with priority as of July 15, 1977, the date on which the statement of reasons was filed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further consideration consistent with this opinion.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

